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Human right to safe drinking water and sanitation

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the human right to safe drinking water and sanitation, Léo Heller, submitted pursuant to Human Rights Council resolution 24/18.

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Report of the Special Rapporteur on the human right to safe drinking water and sanitation

Summary

In the present report, the Special Rapporteur discusses development cooperation in the water and sanitation sector, assessing the roles that it can and should play in the realization of the human right to water and sanitation.

Development cooperation can impact the human rights situation of a State or region in a positive or a negative way. In the present report, an exploratory work that will be complemented by a more in-depth report in 2017, the Special Rapporteur clarifies the relevant human rights obligations of bilateral and multilateral funders, including United Nations agencies. Subsequently, he assesses how development cooperation has been evolving in the water and sanitation sector. The Special Rapporteur presents a critical examination of relevant patterns and tendencies, drawing attention to the current approaches of funders and partner States in that field, with a focus on the related human rights principles and normative content. A number of key issues are addressed, with emphasis on measures that mitigate negative impact and maximize positive impact on human rights.

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I. Introduction

1. The 2030 Agenda for Sustainable Development, adopted by the General Assembly in September 2015, contains a broad set of Sustainable Development Goals that will require unprecedented global commitment and cooperation between countries (see General Assembly resolution 70/1). From the human rights perspective, the agenda is grounded in international human rights law and offers critical opportunities to further advance the realization of human rights for all people everywhere without discrimination.[1] The challenge now is to ensure that strategies and policies to implement the 2030 Agenda are effectively based in the established human rights framework.

2. The human rights to water and sanitation are explicitly referenced in the Agenda, and targets 6.1 and 6.2 are in line with some aspects of the normative content of those rights. The Goals are considered interdependent, and it is very clear that achieving Goal 6 will have a great impact on other Goals. At the same time, several Goals are fundamental for the realization of the human right to water and sanitation, such as Goal 10 on reducing inequality within and among countries and Goal 17 on strengthening the means of implementation and revitalizing the Global Partnership for Sustainable Development. Several targets of Goal 17 aim at the full implementation of official development assistance by developed countries and their reaching certain proportions of aid relative to gross national income, and address finance, technology and capacity-building and respecting each country's policy space and leadership to establish and implement policies for poverty eradication and sustainable development.

3. Given that background, the present report seeks to assess the roles that development cooperation[2] can and should play in the realization of the human right to water and sanitation. There are several reasons to affirm the relevance of development cooperation to the realization of the human right to water and sanitation. One is that it represents an important share of total funding for water and sanitation services in the global South, which is to increase pursuant to the 2030 Agenda. Another reason is that development cooperation often establishes a benchmark for adequate conduct in the water and sanitation sector, not only for funders but also governmental agencies of partner countries.[3] Such influence can significantly affect the prospects for the realization of the human right to water and sanitation.

4. The present report has three main objectives: first, to clarify the human rights obligations of bilateral and multilateral funders, including United Nations agencies,

[1] See Office of the United Nations High Commissioner for Human Rights (OHCHR), "Human Rights and the 2030 Agenda for Sustainable Development", available from www.ohchr.org/EN/Issues/MDG/Pages/The2030Agenda.aspx.

[2] The term "development cooperation" is used throughout the present report, although some sources use different terms, sometimes with slightly different meanings. The intention here is to highlight the relevance of both components: "development" as the purpose of this kind of support to interested States and "cooperation" denoting a horizontal relationship between funders and recipient States. Conventionally, development cooperation includes actions such as grants, loans, debt forgiveness, technical and programming support and policy advice to recipient States.

[3] "Partner" State or country is used in the present report in place of "recipient" State or country, with the intention of suggesting a more horizontal relationship between the funder and the State that receives funding.

that engage in cooperation with States in the water and sanitation sector; second, to assess how development cooperation has been evolving in the water and sanitation sector; and third, to critically examine current approaches being taken in that field, with a focus on human rights.

5. The analytical framework adopted in the report is based on human rights principles and the specific normative content of the human right to water and sanitation. Accordingly, consideration is given to how the human rights principles of equality and non-discrimination, access to information, participation, accountability and sustainability are reflected in the selection, design and implementation of water and sanitation projects financed in the context of development cooperation. In addition, certain aspects of the normative content of the human right to water and sanitation, in particular affordability and accessibility, have been especially relevant as analytical lenses in that discussion.

6. The report focuses mainly on the least developed countries, considering that most of them did not achieve the Millennium Development Goals related to water and sanitation and their acute need for development cooperation to realize the human right to water and sanitation. Although the main subjects of the report are bilateral and multilateral funders, the Special Rapporteur recognizes the important role played by other non-State actors, such as civil society organizations, in development cooperation.

7. The report uses an exploratory approach. Based on the report, the Special Rapporteur plans to hold a series of dialogues with funders and partner States to better understand how their policies and approaches reflect and operationalize the human rights framework relating to access to water and sanitation services. The results of that research will be submitted to the General Assembly in 2017 as part of a more in-depth analytical report containing focused recommendations.

II. Human rights in development cooperation

A. Obligations under international human rights law

8. International human rights law defines the obligations of States with respect to taking appropriate measures, including through international assistance and cooperation, to the maximum of their available resources, towards the full realization of economic, social and cultural rights.

9. Under article 2 (1) of the International Covenant on Economic, Social and Cultural Rights, for instance, each State Party undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the Covenant by all appropriate means, including in particular the adoption of legislative measures. That obligation applies to the progressive realization of the human right to water and sanitation since that human right is recognized by the Human Rights Council and the General Assembly as deriving from the right to an adequate standard of living (article 11 of the Covenant). A similar obligation is also contained in article 4 of the Convention on the Rights of the Child.

1. Obligations of States

10. On the one hand, States that are unable to fulfil their obligations with respect to economic, social and cultural rights have the obligation to formulate relevant plans and strategies, seek international cooperation as needed and utilize the assistance provided towards the realization of economic, social and cultural rights. On the other hand, States that are in a position to support other countries in realizing those rights have the obligation to provide necessary support through international assistance and cooperation in a manner consistent with their obligations to fulfil economic, social and cultural rights extraterritorially.[4]

11. More specifically with respect to the human right to water, the Committee on Economic, Social and Cultural Rights explained that States parties are obligated to respect the enjoyment of that right in other countries, to refrain from actions that interfere with the enjoyment of the right to water in other countries and to prevent their own citizens and companies from violating the right to water of individuals and communities in other countries. In addition, the Committee indicated that States should facilitate realization of the right to water in other countries, for example through provision of water resources, financial and technical assistance and necessary aid when required, in a manner that is consistent with the Covenant and other human rights standards and that is sustainable and culturally appropriate. The economically developed States have a special responsibility and interest to assist the poorer developing States in that regard. The Committee also elaborated on the responsibility of States through multilateral organizations, indicating that State parties that are members of international financial institutions, notably the International Monetary Fund, the World Bank and regional development banks, should take steps to ensure that the right to water is taken into account in their lending policies, credit agreements and other international measures (see E/C.12/2002/11, paras. 33, 34 and 36).

12. Non-State actors from both funder States and partner States often play an important role in development cooperation. In that connection, it is important to recall that, even when development cooperation in the water and sanitation sector passes through non-governmental organizations, States continue to possess an obligation to ensure that all instruments for delegation, including contracts, are in line with human rights standards, contribute to the realization of the rights to water and sanitation and guide the activities of non-State service providers (see A/HRC/15/31, para. 63 (f)).

2. Obligations of multilateral organizations

13. Regarding the obligations of multilateral actors, the Committee stated that United Nations agencies and other international organizations should cooperate

[4] See, for example, E/C.12/2002/11 and Committee on Economic, Social and Cultural Rights, general comment No. 15, para. 38; general comment No. 14, para. 45; general comment No. 17, para. 40; general comment No. 19, para. 61 (available from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11). See also Committee on the Rights of the Child, general comment No. 16, para. 41(available from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?TreatyID=5&DocTypeID=11). For a useful interpretation of international law on the issue, see the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights of the ETO Consortium, principles 33, 34 and 35.

effectively with States parties, building on their respective expertise, in relation to the implementation of the right to water at the national level and that the international financial institutions should take into account the right to water in their lending policies, credit agreements, structural adjustment programmes and other development projects, so that the enjoyment of the right to water is promoted (see E/C.12/2002/11, para. 60). The Special Rapporteur is of the view that, since 164 States are parties to the International Covenant on Economic, Social and Cultural Rights as well as other relevant international human rights instruments, international financial institutions, regional banks and regional development organizations, all of which consist of Member States that have signed and ratified multiple human rights treaties, should respect, protect and facilitate the human right to water and sanitation through their activities. It follows that, even when non-State actors operationalize development cooperation initiatives supported by multilateral funders, those funders may also be held accountable for complying with human rights obligations. In addition, international organizations are bound by all human rights that are part of international customary law, general principles of law and the human rights-related provisions in their constitutions. The latter are particularly applicable to United Nations specialized agencies given that they are bound by the Charter of the United Nations.

B. How human rights principles apply and should be manifested in development cooperation

14. Integrating human rights law and principles into development cooperation provides a clear legal framework for the human right to water and sanitation that States have already recognized. In addition, the normative content of the human right to water and sanitation and human rights principles offer guidance on who and what to prioritize in planning and programming international cooperation, as well as on how policies, programmes and interventions should take place. It is critical to use the language of the human right to water and sanitation explicitly because, as stated by the Special Rapporteur on extreme poverty and human rights, the human rights language recognizes the dignity and agency of all individuals and is therefore intentionally empowering (see A/70/274, para. 65).

15. A human rights-based approach to development cooperation requires that the main objective should be to fulfil human rights; that policies and programmes identify rights-holders and their entitlements, as well as duty-bearers and their obligations, with the aim of strengthening the capacities of right-holders to claim their rights; and that human rights principles, notably the principles of equality and non-discrimination, accountability, access to information, participation and sustainability, be integrated into policies and programmes.

16. The principle of equality and non-discrimination, for instance, requires the adoption of targeted measures and affirmative action in order to achieve substantive equality. Funders and partners should work together and identify individuals and groups that are disadvantaged in their access to water, sanitation and hygiene and that are particularly vulnerable to exclusion and discrimination. Then they should develop policies and programmes that prioritize those individuals and groups.

17. The principle of participation requires that national stakeholders have ownership and control over development in the processes of planning, implementation, monitoring and evaluation and assessment. Development is for the

people. If their knowledge and expectations are not incorporated in the processes, development cooperation in the water and sanitation sector can never improve their access to water, sanitation and hygiene in a manner consistent with their human rights. National ownership is particularly crucial for the sustainability of development.

18. Access to information allows people to meaningfully participate in decision-making and empowers them to claim their rights and hold duty-bearers accountable.

III. Patterns and trends in development cooperation for water and sanitation

A. Overview of development cooperation in the water and sanitation sector

19. Development cooperation[5] has increased steadily since the 1990s. Between 2010 and 2014, the gross monetary value of grants, loans and technical advice disbursed to all sectors was approximately $791 billion, an average of $158 billion annually.[6] It is estimated that development cooperation in the water supply and sanitation sector increased by 12.3 per cent between 2006 and 2014, with a gross disbursement of $7.2 billion in 2014, corresponding to approximately 4 per cent of disbursements to all sectors that year.[7] Data show that between 2010 and 2014, $43.7 billion was committed to the water supply and sanitation sector. The top 10 funders, which provided nearly 80 per cent of total funding for water supply and sanitation projects in the period 2010-2014, included: the International Development Association/World Bank Group (17.4 per cent), Japan (15.5 per cent), Germany (12.2 per cent), European Union institutions (8.7 per cent), France (7.5 per cent), the United States of America (4.9 per cent), the special funds of the Asian Development Bank (3.8 per cent), the African Development Fund (3.1 per cent), the Republic of Korea (3.0 per cent) and the Netherlands (2.9 per cent).

20. Nevertheless, the overall global increase in funding to the sector masks significant annual variations in disbursed funds and funding modalities. Regarding funding commitments, for the 2010-2012 period, 41 per cent of aid commitments were grants and 59 per cent were concessional loans.[8] In addition, critical reviews of development cooperation flows indicate that the available data on those flows may be fragmented at best.[9] That could be due in part to a lack of collaboration between funders to provide consolidated, reliable, accurate and disaggregated data. Regarding disaggregation, the majority of development projects registered in the

[5] Although some of the data included in this section are presented in the original sources as "official development assistance", they are designated in the present report by the term "development cooperation", as explained in footnote 3.

[6] Organization for Economic Cooperation and Development (OECD), Creditor Reporting System, available from https://stats.oecd.org/Index.aspx?DataSetCode=CRS1 (accessed 2 August 2016).

[7] Organization for Economic Cooperation and Development (OECD), Creditor Reporting System: Water, available from http://stats.oecd.org/Index.aspx?QueryId=58195 (accessed 22 July 2016).

[8] See World Health Organization (WHO), *UN-Water Global Analysis and Assessment of Sanitation and Drinking-Water: GLAAS 2014 Report — Investing in Water and Sanitation: Increasing Access, Reducing Inequalities* (Geneva, 2014).

[9] See William Easterly and Tobias Pfutze, "Where does the money go? Best and worst practices in foreign aid", *Journal of Economic Perspectives*, vol. 22, No. 2 (Spring 2008).

relevant database of the Organization for Economic Cooperation and Development (OECD), accounting for more than half of the amount of funds dedicated to the sector, do not clearly indicate, for example, whether rural or urban areas have been targeted.[10] Considering the markedly lower levels of access to adequate water and sanitation services in rural areas compared with urban areas, that information gap indicates a need for improved reporting by Member States. Another noteworthy source of data inaccuracy is the non-inclusion of important interventions in informal settlements because those are considered to be part of so-called "slum/squatter upgrading".

21. It is also relevant to point out that significant proportions of development cooperation are channelled through non-governmental organizations and civil society, multilateral organizations, public-private partnerships and private contractors. In the water and sanitation sector, data reveal an unstable trend: in 2006, 51 per cent of funds were channelled through a public entity in developed States, while in 2011, that figure was 83 per cent.[6]

22. Overall, notwithstanding growing levels of development cooperation, it is still insufficient in quantity and questionable in terms of targeting when it comes to meeting the world's needs for water and sanitation.[11] For example, commitments of funds for basic systems, a proxy indicator for the extent to which the urban poor and rural populations are being reached, are consistently less than those for large systems. In 2013, 24 per cent of funds went to basic systems, compared with 50 per cent for large systems,[12] with a decrease in funds for those projects from 26 per cent to 21 per cent between 2010 and 2012.[8] Moreover, development cooperation still does not appear to be allocated with priority to the least developed countries.

B. Types of water and sanitation projects funded through development cooperation

23. In 2014, the OECD database on development cooperation registered some 7,500 projects in the water and sanitation sector in more than 140 countries, financed by OECD member States, OECD non-member States and multilateral funders. Some 2,700 of those projects were financed in the 48 least developed countries, totalling close to $2.6 billion, or approximately 30 per cent of total funding in the sector.[13]

24. Those levels of development cooperation are likely linked to the fact that the least developed countries did not meet the Millennium Development Goals on water and sanitation. While 49 per cent of the population of those countries have gained access to improved water sources since 1990, the level of access overall remained at

[10] See Wilbrod Ntawiha, "People in rural areas risk being left behind as aid to water and sanitation appears to provide better support to urban areas", 22 March 2016, available from http://devinit.org/news/#!/post/world-water-day-2016.

[11] See OECD, "Financing water and sanitation in developing countries: the contribution of external aid", June 2013, available from www.oecd.org/dac/stats/Brochure_water_2013.pdf.

[12] See WaterAid, "Essential element: why international aid for water, sanitation and hygiene is still a critical source of finance for many countries" (2015).

[13] See OECD, "Water-related aid data at a glance", Development Finance Statistics database, available from www.oecd.org/dac/stats/water-relatedaiddataataglance.htm (accessed 26 June 2016).

69 per cent. Regarding access to improved sanitation, only 27 per cent of the population has gained access since 1990 and the level of access overall has remained at 37 per cent.

25. Cooperation in the water and sanitation sector officially falls within the following main categories: water resources policy and management; water supply and large sanitation systems; basic drinking water supply and basic sanitation; and education and training in water supply and sanitation. The distinction between basic systems and large systems takes into consideration the number of people to be served: large systems provide water and sanitation to a city or neighbourhood while basic systems provide water and sanitation to small urban communities, including informal settlements, and rural communities.

26. In 2014, loans and grants from OECD member States and multilateral agencies for the water and sanitation sector and the water resources sector were allocated as follows: 50 per cent for large water supply and sanitation activities; 28 per cent for water resources policy/administrative management, water resources protection, waste management/disposal and river basin development; and 22 per cent for basic drinking water supply and sanitation. Only 0.1 per cent was dedicated to education and training in water supply and sanitation.[13]

27. In 2014, in the least developed countries, 41 per cent of funding was allocated to large water supply and sanitation activities, 27 per cent to water resources policy/administrative management, water resources protection, waste management/disposal and river basin development and 32 per cent to basic drinking water supply and sanitation. Only 0.2 per cent was dedicated to education and training in water supply and sanitation.[13]

28. At the close of the Millennium Development Goals period, disparities in water and sanitation services remained, including between urban and rural populations. The trends in development cooperation for the sector show that funders appear to favour large water supply and sanitation activities, which mostly benefit the wealthiest urban populations. They also suggest that much more targeted efforts are needed for the least developed countries, in particular with respect to sanitation, to accelerate progress and thereby achieve universal access by 2030 pursuant to the expectations set forth in the Sustainable Development Goals.

IV. Human right to water and sanitation in development cooperation policies

A. Situating the human right to water and sanitation in development cooperation

1. Pivotal issues

29. The Special Rapporteur sent a questionnaire on the subject of development cooperation in the water and sanitation sector to relevant stakeholders. The 10 items on the questionnaire were designed to uncover good practices and help assess existing policies and their association with human rights.[14] Nine States and nine

[14] The questionnaire and responses are available from www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/DevelopmentCooperationSubmissions.aspx.

civil society organizations and coalitions of individuals and entities submitted responses that were taken into consideration as part of the broader analysis of States and multilateral funders, which is presented in this section and other sections below.

30. States must respect, protect and fulfil the human right to water and sanitation in the development cooperation projects they finance, at both the national and regional levels. However, the human rights-based approach still has not been well incorporated by policy makers, sector experts or practitioners in development cooperation in the water and sanitation sector.

31. Development cooperation can have an impact on the human rights situation of a State or region in a positive or a negative way. Some civil society organizations have noted that seemingly well-intentioned programmes or projects to improve the water and sanitation services of a given city or region have at times had a negative impact on a subset of service users. In some cases the responsibility for the negative impact on the human right to water and sanitation as a result of development cooperation activities can rest with both the funders and the partner State, including with respect to the affordability of services after project completion, the accountability of public authorities and contracted businesses throughout those projects, stakeholder participation, access to information and the overall sustainability of services.

32. Some projects may evoke broader human rights concerns, such as the protection of the right of individuals to freedom of expression and those of human rights defenders. For example, there have been an unfortunate number of reports of the lives of civil society stakeholders being threatened when they voiced concerns for human rights in relation to multilateral development cooperation activities.[15] Within the human rights framework, partner States are required to create an enabling environment for active and informed participation and the protection of human rights defenders. It is also important to recall that a funding State is responsible in the context of its assistance to a beneficiary State when an internationally wrongful act has been carried out by the beneficiary State if the funding State provides such cooperation with knowledge of the circumstances and if the act would have been deemed wrongful if committed by the funding State.[16]

33. Another issue is that some stakeholders may consider certain human rights-based approaches to represent an unnecessary diversion of funds, demonstrations of "excesses of zeal" or a restriction on the flexibility of funding entities.[17] Such concerns could be brought on by the participation by multiple stakeholders in the design phase of a programme, which may lead to lengthier processes that require a greater number of opinions to be taken into consideration. The Special Rapporteur does not fully share the preceding points of view. In agreement with the conclusions reached in an evaluation carried out by the United Nations Inter-agency Mechanism

[15] See Human Rights Watch, "At your own risk: reprisals against critics of World Bank Group projects", 22 June 2015, available from www.hrw.org/report/2015/06/22/your-own-risk/reprisals-against-critics-world-bank-group-projects.

[16] See General Assembly resolution 56/83, annex, art. 16. According to a ruling of the International Court of Justice in the Bosnian genocide case (*Bosnia and Herzegovina v. Serbia and Montenegro*, judgment of 26 February 2007, para. 420), art. 16 reflects a customary rule.

[17] AquaFed: the International Federation of Private Water Operators, "AquaFed contribution on questions for the report on Development Cooperation", 30 January 2016, available from www.aquafed.org/Public/Files/__Uploads/files/2016-01-31%20AquaFed_RTWS_DevCoop_Heller.pdf.

on All Freshwater-related Issues, Including Sanitation (UN-Water), the Special Rapporteur is of the view that raising awareness of rights-holders by strengthening participatory processes can lead to greater ownership, more involvement in operations and maintenance and improved sustainability of sanitation and water services.[18]

2. Conditionalities in development cooperation

34. Although part of the literature on conditionalities in development cooperation identifies positive and negative outcomes,[19] there is a relevant body of research in the water and sanitation sector that highlights the negative aspects of imposing conditionalities. Various types of conditionalities, including ex ante or ex post, policy-based, output-based and tied aid, are commonly used in development cooperation projects in the water and sanitation sector. For example, a funder could condition aid for a collective water supply system on the raising of tariffs paid by users, a policy of full-cost recovery or the privatization of service provision. There is a growing call to end those practices in the interest of ensuring country ownership. For example, the intergovernmental International Conference on Freshwater declared that private sector participation should not be imposed on developing countries as a conditionality for funding, and that priority should be given to catalysing other forms of financing, building capacity and targeting the poor, especially in rural areas.[20] The Special Rapporteur received several statements in response to the above-mentioned questionnaire that reinforced such calls.

35. Civil society organizations stressed that implementing development cooperation in the water and sanitation sector does not only mean making financial arrangements, but also establishing constructive relationships that coordinate to produce regionally and culturally specific policy and programme frameworks. Those affirmations embody serious, well-founded concerns that the orientation of some projects and programmes in the sector continue to be towards profit-based priorities. Civil society organizations also called for both funding and partner States to be responsible for the adverse effects of development cooperation projects on human rights. For example, when conditionalities imposed by funders requiring full-cost recovery through tariffs have raised the cost of access to water and sanitation services and cut off recourse for affected residents to petition those measures, civil society may rightly criticize public authorities for not protecting users from the adverse impact of unaffordable services, as well as the funder for facilitating the creation of such circumstances.

3. The human right to water and sanitation in State and multilateral agency policies

36. The available general policy documents of the main funding States and multilateral funders show that in most cases they implicitly recognize some of the human rights principles, including equality and non-discrimination, access to information, participation and accountability, in their policy frameworks for development cooperation. In general, a number of human rights principles are

[18] See WHO, *UN-Water Global Analysis and Assessment of Sanitation and Drinking-Water (GLAAS) 2012 Report: The Challenge of Extending and Sustaining Services* (Geneva, 2012).

[19] Svea Koch, "A typology of political conditionality beyond aid: conceptual horizons based on lessons from the European Union", *World Development*, vol. 75 (November 2015).

[20] See Summary of the International Conference on Freshwater, held in Bonn, Germany from 3 to 7 December 2001, available from www.iisd.ca/crs/water/SDH20/sdvol66num5.html.

accepted and some funding agencies use compatible indicators and similar principles. However, those organizations do not yet recognize such principles as obligations under international human rights law or necessarily observe them as such in project implementation and reporting. Some elements of the normative content of the human right to water and sanitation, such as water quality and availability, are addressed by development cooperation projects, while others, such as affordability of services and accessibility, are systematically absent from policies.

37. In that respect, the recently issued OECD Principles on Water Governance represent a relevant example of a broad political commitment on the part of developed countries. The 12 principles clearly encompass some human rights principles, such as transparency and participation (referred to as "stakeholder engagement" therein), as well as other good practices, such as promoting policy coherence across sectors. However, important normative content, such as affordability, appears as more of an aspiration than an obligation under human rights law.[21] A 2007 policy paper of the OECD Development Assistance Committee on human rights and development clearly indicated the need to integrate human rights into decision-making, establish safeguards and promote the observation of human rights principles such as non-discrimination.[22]

38. It is important to clarify that the observation of some human rights principles and normative content is not the same as, and is usually far from, the application of a human rights-based approach. To ensure an effective foundation for a human rights-based approach to development cooperation in the water and sanitation sector, States and multilateral agencies must adopt a holistic view of policy, project and programme compliance within the human rights framework.

39. A few funders have implemented projects aiming explicitly to improve the situation with respect to the human right to water and sanitation. One of the very few examples of a project with a specific human rights focus is a German Cooperation-funded project in Kenya on ensuring the right to water for the poorest. Considering the need to supply drinking water to the urban poor, the project set up a network of water kiosks to sell water at regulated prices and created water action groups to improve participation. Consequently, the Government of Kenya requested funders to align their programmes to reflect the human right to water and sanitation.[23] Another example is the creation of a manual on the right to water and sanitation, a tool to assist policymakers and practitioners in developing strategies for implementing the human right to water and sanitation, which was funded by the Swiss Agency for Development and Cooperation and the United Nations Human Settlements Programme (UN-Habitat), that includes recommendations for development cooperation.[24]

[21] See OECD, "OECD principles on water governance", available from www.oecd.org/governance/oecd-principles-on-water-governance.htm.

[22] See OECD, "Development Assistance Committee action-oriented policy paper on human rights and development", 1 June 2007.

[23] See European Commission, "Commission staff working document: tool-box — a rights-based approach, encompassing all human rights for European Union development cooperation", 30 April 2014.

[24] See Centre on Housing Rights and Evictions and others, *Manual on the Right to Water and Sanitation* (Geneva, 2007).

40. The Special Rapporteur is of the view that the framework for the human right to water and sanitation should be applied across all forms and levels of water and sanitation projects supported through development cooperation, including water resources policy and administrative management programmes at the national, regional and the watershed levels, at the level of large water and sanitation systems for cities and at the local level for basic drinking water and sanitation systems for rural areas and low-income communities in urbanized areas.

41. The Special Rapporteur has reviewed relevant policy documents from the State funders who have dedicated the greatest amount of funds to development cooperation in the water and sanitation sector. The review was not intended to be exhaustive nor was it intended to make a critical judgment, but rather provides an overview of the approaches and points of view of the funding States, based on relevant official documents. Some funding States mention the human right to water and sanitation or a human rights-based approach at the framework level in their policy documents. However, there is no evidence that funding States systematically apply the human rights approach to water and sanitation as a necessary criterion in the selection of projects to be financed. The choice of financing a specific activity seems to depend much more on the funder's global strategy and the country's demand. Even when the human right to water and sanitation is exceptionally mentioned in the initial project assessment documents, once the project is implemented, those rights are not specifically referred to in the main planning and assessment tools, such as the annual operating plans and the project monitoring documents.

42. The broad conclusion is that explicit commitments to human rights in the development cooperation policies of funders constitute a heterogeneous patchwork. There are some notable cases in which the overall approach to cooperation policy, at least as set forth in official documents, is based on the human rights framework. For example, the Ministry for Foreign Affairs of Finland published a policy document that stated that the Government's development policy programme for 2012 required that a human rights-based approach be implemented in all development policy and development cooperation practiced by Finland.[25] Similarly, a framework document of the Federal Ministry for Economic Cooperation and Development of Germany,[26] contained an affirmation of human rights as one of the guiding principles for German development policy. The Federal Ministry also stated that its human rights strategy was complemented by operational guidelines specifying how to assess human rights-related risks and impact in the appraisal phase of all development programmes commissioned by the Ministry. A pioneering document from the Federal Ministry on translating theory into practice with respect to the human right to water and sanitation indicated that its policy was based on a review of experience in Kenya in 2007 and that the experience in Kenya showed that a human rights-based approach to water and sanitation could be successfully pursued, gradually leading to sustainable benefits for all.[27] Other relevant approaches include that of

[25] Finland, Ministry for Foreign Affairs, *Guidelines: Implementing the Human Rights-Based Approach in Finland's Development Policy* (2013), p. 1.

[26] Germany, Federal Ministry for Economic Cooperation and Development, *The Human Rights-Based Approach in German Development Cooperation* (2014), p. 3.

[27] Germany, Federal Ministry for Economic Cooperation and Development and the German Technical Cooperation, *The Human Right to Water and Sanitation: Translating Theory Into Practice* (Eschborn, Germany, 2009), p. 2.

the Republic of Korea of laying the foundation for reflecting a human rights-based approach in the whole programme cycle from the design to implementation phases; that of Denmark of affirming that poverty reduction and promotion of human rights are the core of development cooperation;[28] and that of Austria of ensuring that development cooperation does not risk violating human rights and that a human rights-based approach is applied in programmes, projects and in political and policy dialogues.[29] There are other countries that recognize the human rights framework in their policies, including Canada, whose Official Development Assistance Accountability Act establishes that official development assistance must be consistent with international human rights standards;[30] and France, whose Ministry of Foreign Affairs, in a document on democratic governance and human rights, stated its commitment to concretely and holistically promoting human rights across the board in all sectors of French cooperation.[31]

43. In other States, policies specifically concerning the water and sanitation sector contain formulations that reflect the human rights framework in rather distinct ways. For example, the water supply and sanitation assistance strategy of the Japan International Cooperation Agency reflects recognition of the declaration by the General Assembly in 2010 that access to safe drinking water and basic sanitation was a basic human right.[32] The Ministry of Foreign Affairs of the Netherlands indicated that the Netherlands recognized the right to safe drinking water and sanitation as a basic human right and that such recognition granted it the ability to point out, during policy discussions with partner countries, the responsibilities of the Government and the rights of the population, in particular vulnerable groups.[33] The Swiss Agency for Development Cooperation indicated that its new water strategy also set a rights-based approach to water.[34] An official document from Belgium on development cooperation mentioned that human rights principles, including the rights to water, health and decent work and the rights of women, children and indigenous peoples, were all important components of its normative framework.[35] In a reference document on realizing the human right to water and sanitation, the Government of Sweden recalled its declaration of full support for the human right to water and sanitation and that richer States had an obligation to assist

[28] See Denmark, Ministry of Foreign Affairs, *The Government's Priorities for the Danish Development Cooperation 2016: Overview of the Development Cooperation Budget 2016-2019* (September 2015).

[29] See Austria, Federal Ministry for Europe, Integration and Foreign Affairs, *Three-Year Programme on Austrian Development Policy 2016-2018* (Vienna, 2016).

[30] See Canada, Official Development Assistance Accountability Act, *Statutes of Canada*, chap. 17 (2008).

[31] See France, Ministry of Foreign Affairs, *Democratic Governance and Human Rights* (Paris, 2010).

[32] See Japan International Cooperation Agency, "Assistance strategy on water supply and sanitation" (May 2012).

[33] See the Netherlands, Ministry of Foreign Affairs, *From Infrastructure to Sustainable Impact: Policy Review of the Dutch Contribution to Drinking Water And Sanitation (1990-2011)* (The Hague, 2012).

[34] See Switzerland, Swiss Agency for Development and Cooperation, *SDC's Human Rights Policy: Towards a Life in Dignity — Realizing Rights for Poor People* (Berne, 2006).

[35] See Belgium, Federal Public Service Foreign Affairs, Foreign Trade and Development Cooperation, *Strategy Note: Environment in the Belgian Development Cooperation* (Brussels, 2014).

other States in fulfilling the right to water and sanitation.[36] Spain also has strongly integrated human rights into its development cooperation policies, aiming to adopt a rights-based approach in its cooperation policy and strongly supporting the implementation of the human right to water and sanitation.

44. Unfortunately, many funders still refrain from placing human rights at the core of their policies or from explicitly recognizing the human right to water and sanitation in their policies. In such countries, practical experience in translating the human right to water and sanitation into project implementation still seems limited.

45. A review of the development cooperation policies of major multilateral funders in the sector reveals a mixed panorama regarding the consolidation of the human right to water and sanitation similar to the policies of funding States. Some major funders, such as the Inter-American Development Bank[37] and UNICEF (see E/ICEF/2006/6), have issued specific policy documents in which the human right to water and sanitation has been recognized. For other funders, including the European Union, the general policy framework may reflect a clear concern for guaranteeing human rights through all development cooperation projects. In the European Union, a human rights-based approach is being used to ensure that efforts are strengthened to assist partner countries in implementing their international human rights obligations.[38]

46. Conversely, other major multilateral funders do not incorporate human rights into their policy frameworks, sometimes intentionally. The most remarkable such case concerns the International Bank for Reconstruction and Development and the International Development Association, which form part of the World Bank Group, as thoroughly discussed in 2015 by the Special Rapporteur on extreme poverty and human rights (A/70/274). Notwithstanding non-committal references in policy analyses and public relations statements to the importance of the human rights framework, the World Bank has controversially abstained from including human rights-related criteria in its operational policies, except with respect to the rights of indigenous peoples. Several official World Bank statements have expressed the view that human rights are matters of political concern that, in accordance with the institution's articles of agreement, cannot be considered as criteria for the disbursement of funds. The recently established multilateral development banks, including the Asian Infrastructure Investment Bank and the New Development Bank, include nearly identical terms in their articles of agreement.[39]

47. It is notable that some important multilateral funders, including the World Bank and the Asian Development Bank, view water as a socially vital economic good[40] and aspire to similar goals of creating inclusive economic growth and

[36] See Swedish International Development Cooperation Agency, "Realizing the Human Right to Water and Sanitation", SIDA Reference Paper (Stockholm, 2013).

[37] See Inter-American Development Bank, "Access to water and sanitation for all and the right to water in the American region", Policy Paper, November 2011.

[38] Council of the European Union, "EU strategic framework and action plan on human rights and democracy", 25 June 2012.

[39] See New Development Bank, Articles of Agreement, annex, art. 13(e), available from http://ndbbrics.org/agreement.html. See also Asian Infrastructure Investment Bank, Articles of Agreement, art. 31(2), available from www.aiib.org/uploadfile/2015/0814/20150814022158430.pdf.

[40] See Asian Development Bank, "Water for all: the water policy of the Asian Development Bank", June 2003.

equity[41] and reducing poverty. As indicated previously, such goals may claim to produce outcomes that contribute to improved access to water and sanitation. However, it may result in part from a lack of concrete human rights consistency that programmes and projects are oriented to hastily pushing money out of the door (see A/70/274, para. 36). A framework with solid grounding in human rights, backed by the commitment of the staff and boards of those institutions, would provide safeguards against such risks, ensuring that loans for water and sanitation projects and programmes do not produce negative outcomes for some individuals or groups, but rather increase the realization of the rights of the most disadvantaged.

48. Moreover, it has been rightly pointed out that recent uprisings have highlighted the need for development to go hand-in-hand with the defence of human rights and freedoms.[42] It is in that vein that the African Development Bank, in its strategic plan for delivering basic water supply and sanitation to rural Africa for the period 2012-2015, explicitly referred to the realization of the human right to water and sanitation as a component of an enabling environment for the improvement of governance in the subsector.[43]

B. Evolution of development cooperation in water and sanitation

1. Development cooperation from the 1990s to 2015: "Pro-poor agendas" and development goals

49. The main frameworks for development cooperation in water and sanitation have been set by various meetings and policy documents, including the report of the International Conference on Water and the Environment, held in Dublin in January 1992, and the Agenda 21 of the United Nations Conference on Environment and Development, held in Rio de Janeiro, Brazil, in June 1992.

50. The Dublin Conference report sets out principles for action at the local, national and international levels. One of the very influential principles contained therein is relatively ambiguous regarding the role of the human right to water and sanitation in development cooperation and supports the strongly criticized policies of multilateral agencies. According to the principle, on the one hand, it is vital to recognize first the basic right of all human beings to have access to clean water and sanitation at an affordable price; on the other hand, managing water as an economic good is an important way of achieving efficient and equitable use of water resources and of encouraging conservation and protection of those resources. The definition of water as an economic good has led to a set of cooperation programmes in developing countries with radical conditionalities that impose privatization of services and commodification of water, with little consideration for the human rights framework. In a sense, the second part of the principle, the "economic side", has triumphed over the first part, the "rights side".

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[41] See World Bank, "Shared prosperity: a new goal for a changing world", 8 May 2013, available from www.worldbank.org/en/news/feature/2013/05/08/shared-prosperity-goal-for-changing-world.

[42] See European Union, *The European Union Explained: International Cooperation and Development* (Luxembourg, 2014).

[43] See African Development Bank, "Strategic plan 2012-2015: delivering basic water supply and sanitation to rural Africa".

51. The process of incorporating the human right to water and sanitation in development cooperation has not been a straightforward, consensual or expeditious process. International events have provided opportunities for governmental bodies to make various human rights-related commitments. One clear example of this is the Accra Agenda for Action of 2008, agreed to by developed and developing countries, in which it was indicated that developing countries and donors would ensure that their respective development policies and programmes were designed and implemented in ways consistent with their agreed international commitments on gender equality, human rights, disability and environmental sustainability.[44] More recently, the Ministerial Declaration of the Sixth World Water Forum (2012), adopted by representatives of 145 countries, demonstrated a true international consensus on the right to water and sanitation and the commitment by Governments to accelerating access to safe and clean drinking water and sanitation in line with United Nations resolutions.[45] In the Ministerial Declaration of the Seventh World Water Forum (2015), signatories indicated their engagement to translate commitments into national policies, plans and actions and to intensify joint efforts to advance water-related cooperation on a global scale, as well as their commitments to the human right to safe drinking water and sanitation and to ensuring progressive access to water and sanitation for all.[46]

52. While those international commitments were being negotiated and settled during the 1990s and 2000s, various funders were simultaneously establishing their own policies. Regarding the policies of several multilateral agencies, a popular focus since then has been the so-called "pro-poor" or social safety nets approaches, which target the poorest groups. Those orientations have been the subject of both intense theoretical debates that focus on the various social effects of targeted or universal interventions and empirical research assessing the outcomes of various programmes. "Pro-poor" approaches have not been effective in certain sectors, owing to their inability to meet the needs of the poor;[47] this has been particularly the case in the water and sanitation sector.[48]

53. Another evolution of those policies was related to the integration of development cooperation into the Millennium Development Goals, which created the expectation that international transfers would play an important role in helping developing countries to meet the targets. It is important to note that the targets of the Millennium Development Goals for water and sanitation were not as ambitious as those in the Sustainable Development Goals, as the former sought only to halve the proportion of people without sustainable access to safe drinking water and sanitation.

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[44] See OECD, "The Paris Declaration on Aid Effectiveness and the Accra Agenda for Action", available from: www.oecd.org/dac/effectiveness/34428351.pdf.

[45] See *Post-forum highlights of the Sixth World Water Forum: Time for Solutions, Marseille, France, 12-17 March 2012*, p. 12, available from www.worldwaterforum6.org/fileadmin/user_upload/pdf/publications_elem/Highlights_web_BD_en.pdf.

[46] See World Water Forum, Ministerial Declaration, 13 April 2015, available from www.worldwatercouncil.org/fileadmin/world_water_council/documents/press_releases/Ministerial_Declaration_7th_World_Water_Forum_1304_Final.pdf.

[47] See David Coady, Margaret Grosh and John Hoddinott, "Targeting outcomes redux", *World Bank Research Observer*, vol. 19, No. 1 (2004).

[48] See Guy Norman and Steve Pedley, "Exploring the negative space: evaluating reasons for the failure of pro-poor targeting in urban sanitation projects", *Journal of Water, Sanitation and Hygiene for Development*, vol. 1, No. 2 (June 2011).

54. It is clear that the various drivers for development cooperation in water and sanitation in recent decades have been predominantly inspired by principles other than the human rights framework and that the processes and outcomes of billions of dollars invested in developing countries, particularly in the least developed countries, have barely involved human rights-based interventions. Principles such as equality and non-discrimination, access to information, participation, accountability and sustainability have not been mainstreamed in the relevant policies. Nor has the human rights principle of progressive realization using the maximum available resources been a priority in a number of countries. Furthermore, some normative content with respect to the human right to water and sanitation has also been neglected in those processes, especially affordability and acceptability, the former having been impacted by cost-recovery policies attached to development cooperation and the latter by the common practice of technology transfer without due attention to the sociocultural preferences of the target populations. It is important to emphasize that cultural acceptability must be defined by the rights-holders, not the duty-bearers, so that levels and quality of access will not be determined on the basis of the stereotypes held by entities linked to duty-bearers.

2. Development cooperation after 2015

55. It is clear that the realization of the Sustainable Development Goals will require unprecedented cooperation between countries and the development of strong cooperation strategies and actions. The Addis Ababa Action Agenda, adopted at the Third International Conference on Financing for Development and endorsed by the General Assembly in 2015 (resolution 69/313), provides a comprehensive set of policy actions by Member States, with a package of over 100 concrete measures to finance sustainable development, transform the global economy and achieve the Sustainable Development Goals.

56. A joint initiative of the Secretary-General and the World Bank Group created the High-level Panel on Water to provide support in the implementation of the 2030 Agenda. The 10-member panel is comprised of Heads of State or Government; the Panel has two special advisers. The declared aim of the Panel is the mobilization of action to accelerate the implementation of Goal 6 and its related targets.

57. In order to effectively incorporate the human right to water and sanitation in the implementation of the 2030 Agenda, particularly with respect to development cooperation, an adequate architecture must be established to assist in the formulation, guidance, management and support of the development agenda. That architecture should ideally place the normative content of the human right to water and sanitation at the centre of the specific processes related to Goal 6 overall and targets 6.1 and 6.2 specifically. The Panel should be acutely aware of the need to base its recommendations in human rights principles and the normative content of the human right to water and sanitation, as outlined in the present report. In so doing, the Panel should be able to duly address concerns raised by civil society organizations regarding the possible propensity to predominantly favour a business-oriented approach to the sector.[69] The establishment of an entity with greater openness and a wider plurality of stakeholders and viewpoints is essential to successfully introducing

[69] See letter from the Blue Planet Project and others, available from http://blueplanetproject.net/documents/bpp-unsg-letter-0416.pdf.

the human right to water and sanitation into development cooperation and to achieving the water and sanitation-related goals of the 2030 Agenda.

V. Stakes in development cooperation for water and sanitation based on the human rights framework

58. Based on the previous sections, which have mapped out development cooperation in the water and sanitation sector and its current and potential level of integration in the human rights framework, some proposals have been put forth that suggest possible avenues for achieving a proper scenario for development cooperation. The following subsections briefly discuss a number of those proposals, which are bases for part of the recommendations in the present report and serve as a preliminary guide to the development of the forthcoming report of the Special Rapporteur to be submitted to the General Assembly in 2017.

A. Human rights-based approach

59. The existence of a human rights-based approach in the formulation of development cooperation projects and programmes appears to be more of an exception than a rule in the current policies of bilateral and multilateral funders.

60. Establishing a human rights-based approach in the initial stages of a given project is essential to ensuring that the human rights framework will be embedded in the project from its conception and throughout its implementation. The specific measures to effectively implement that approach depend on the nature of the project. It may include a human rights impact assessment or other due diligence measures that enable funders to identify and mitigate the negative impact of their activities on human rights, to provide positive support, advice and assistance to States in relation to human rights (see A/70/274, para. 84) and to refrain from supporting projects and programmes that would contravene the international human rights obligations of funders and partner States. In that context, it is noteworthy that several stakeholders, including 28 special procedures mandate holders of the Human Rights Council, have exhorted the World Bank to include human rights assessments in the environmental and social policies of their revised safeguards.[50]

B. Country ownership

61. The lack of consideration of country ownership in the process of development cooperation is a frequently raised issue. In that regard, the participation of Governments and civil society in partner countries in conceptualizing, implementing, monitoring and evaluating development policies, programmes and processes needs to be part of the processes of development cooperation.[51] It is

[50] Philip Alston and others (28 special procedures mandate holders), letter to the President of the World Bank, 12 December 2014. Available from www.ohchr.org/Documents/Issues/EPoverty/WorldBank.pdf; Human Rights Watch, "The World Bank's second draft environmental and social framework", October 2015, available from http://consultations.worldbank.org/Data/hub/files/hrw_submission_wb_second_draft_environmental_and_social_framework_10_8_20151.pdf.

[51] InterAction, "Country ownership: moving from rhetoric to action" (Washington, D.C., 2011).

important to reiterate in that context that the right to active, free and meaningful participation and the right to information are key human rights principles.

62. At the same time, country ownership is intimately tied to respecting the sovereignty of the partner country, without imposing particular technological solutions and policies. It implies that the best way to achieve project effectiveness must not be decided unilaterally by funders but must be led and fully and meaningfully endorsed by partner stakeholders.[52]

63. In practice, it has been widely observed that conditionalities in loan and grant concessions are often leveraged in such a way as to deny the sovereignty and ownership of the beneficiary country. Even some organizations that are reluctant to accept certain controls over development aid recognize the unfair nature of conditionalities when funders impose their own consultants and suppliers or methods of work.[27] Furthermore, institutional reforms in the water and sanitation sector, often accompanied by privatization processes, are frequently included conditionalities that can have an impact on human rights in different ways, including the probable exclusion of the most disadvantaged. Another common type of conditionality in development cooperation in the water and sanitation sector is the implementation of full-cost recovery policies based on tariff collection. Such policies, when unaccompanied by appropriate safeguards, can raise serious concerns about lack of affordability and its adverse impact on the poorest populations.

C. Legal, regulatory and policy frameworks

64. National contexts are relevant to the progressive realization of the human right to water and sanitation. A number of local factors, including corruption, regulatory frameworks and budgetary priorities, can affect the application of human rights principles and especially the sustainability of services. Corruption, for example, tends to add to the cost of water and sanitation utilities, increasing the price of utilities connections by as much as 30 per cent.[53] A poorly performing economy can make it difficult to finance services unless they are given a very high priority in the budgetary allocations of the given State or region.

65. Water and sanitation provision can be susceptible to a strongly commercially oriented agenda, regardless of the private or public nature of the provider, given the good prospects for profitability under natural monopoly conditions. However, an unregulated, commercially oriented agenda often is not responsive to social welfare and human rights considerations more broadly. Therefore, such services require regulation that is specifically rooted in the principles and normative content of the human right to water and sanitation. Rates must be fair and affordable. Service providers must be transparent, act in good faith, refrain from rent-seeking and be efficient and effective.

66. An adequate institutional environment for water and sanitation services in all States is essential for development cooperation funding to reach those most in need and to be sustainable. It allows loans and grants to leverage national policies,

[52] See World Bank, "Comprehensive development framework: country ownership", available from http://web.worldbank.org/archive/website01013/WEB/0__CON-5.HTM.

[53] Transparency International, *Global Corruption Report 2008: Corruption in the Water Sector* (Cambridge, Cambridge University Press, 2008).

making it easier for States to meet their obligations concerning the progressive realization of human rights. The responsibility falls upon partner countries to create such an enabling environment, in which development cooperation is a fundamental part of national policies to provide water and sanitation and the observance of human rights obligations.

D. Challenges in reconciling funding with effectiveness and economic sustainability

67. The total capital cost of meeting targets 6.1 and 6.2 of the Sustainable Development Goals is estimated at $114 billion per year, excluding the cost of financial and institutional strengthening, a key prerequisite for the sustainability of services. That corresponds to an amount three times higher than current investment levels.[54]

68. In addition, regardless of the level of funding, cooperation should take into consideration the comprehensive nature of water and sanitation services to make sure that outcomes are effective and sustainable. The effectiveness of investments is impaired by inadequate policies, planning and management of water and sanitation services. For example, an ineffective programme for residential connections to a sewerage network brought on by inadequate planning may result in sanitation investments in large cities not having the expected positive impact on the environment and public health. That may be particularly relevant in dense urban areas with significant informal settlements or extensive peripheral neighbourhoods. Another restraint may arise from the application of a poor cost-recovery model based on tariffs and other revenues that effectively prevents service providers from properly operating and maintaining the utilities.

69. Funders must face those challenges head-on to create proper arrangements to ensure that funding actually reaches its destination, thereby effectively generating benefit for the poor and realizing the human right to water and sanitation.

E. Disparity between cooperation in water supply and in sanitation

70. Data on development cooperation in the water and sanitation sector reveal disparities with respect to funding for water supply and sanitation activities. For sanitation, funding in the least developed countries is concentrated in urban areas and greatly favours large systems, while access to water and sanitation in poor urban and rural areas is far worse.

71. In the period 2011-2014, for a majority of least developed countries, funding allocated for large water supply systems was four times more than that allocated for large sanitation systems. The same proportion was observed when comparing basic water supply projects and basic sanitation systems. In many countries, the demand for sewerage has led to an increase in connections without due attention to proper wastewater treatment and disposal. Even in upper-middle income countries, it is estimated that wastewater from 75 per cent of households connected to sewerage is

[54] See Idun Rognerud and others, IRC Trends Analysis, 2016-2025 (The Hague, International Water and Sanitation Centre, 2016).

discharged without treatment into rivers, bays and the sea.[55] However, that trend is not necessarily linear, since in many cities in Africa and Asia, city-wide solutions for water and sanitation seem to no longer receive priority.[56] The bias towards water supply projects to the detriment of investments in sanitation, sometimes with insufficient attention to the sanitation chain, must be assessed from the human rights perspective. It is especially important to explore how that imbalance affects the enjoyment by the most disadvantaged of their rights to affordable and accessible water and sanitation services.

F. Prioritizing funding for capacity-building

72. Owing to a lack of expertise or the use of inappropriate technology, water and sanitation infrastructure provided through development cooperation may not be well-maintained or well-operated, making it necessary to provide further funding for education and training. Capacity-building is key to ensuring the sustainability of investments and a human rights-based approach should be adopted in this respect. Doing so would involve the main stakeholders directly and indirectly concerned in the adequate provision of services and strengthening their ability to perform tasks and produce outputs, collectively define and solve problems and make informed choices.[57] Other forms of cooperation, such as public-public partnerships, which are absent from the policies of most international funders, can respond effectively to that need. In that context, it is noteworthy that a petition to the European Commission with 1.9 million signatures that was ultimately endorsed by the European Parliament called for the adoption of a human rights approach to development cooperation based on not-for-profit principles and solidarity among water operators and authorities, including capacity-building partnerships aimed at improving the quality of water services.

VI. Conclusion and recommendations

73. **The present report provides an exploratory and preliminary approach to analysing development cooperation in the water and sanitation sector between States and multilateral agencies, based on secondary data, published articles and responses to a questionnaire sent to several stakeholders. Some of the issues presented will require more thorough and in-depth research, to be performed through engagement with relevant funders and partner States, and will be addressed in a subsequent report to be submitted in 2017. That report will include, but will not be limited to, a review of experiences that illustrate the stakes involved in applying the human rights framework to development cooperation in the water and sanitation sector carried out by States, multilateral agencies and (possibly) non-governmental organizations. Given**

[55] See United Nations Educational, Scientific and Cultural Organization, *The United Nations World Water Development Report 2015: Water for Sustainable World* (Paris, 2015).

[56] For a discussion on city-wide sewerage systems, see David Hall and Emanuele Lobina, "Public policy options for financing sewerage systems", in José Esteban Castro and Léo Heller, eds., *Water and Sanitation Services: Public Policy and Management* (London, Earthscan, 2009).

[57] See Emanuele Lobina and David Hall, "ACP-EU water facility–partnerships initiative", report prepared for the European Commission, 3 August 2012, available from www.right2water.eu/sites/water/files/2012-08-W-ACPEUPUPs.pdf.

that information on those experiences will be essential in complementing and validating some of the information provided in the present report, the conclusions and recommendations herein must be considered with attention to their preliminary character.

74. In line with the above, with respect to development cooperation in the water and sanitation sector, the Special Rapporteur recommends that States and multilateral funders:

(a) Openly discuss and identify obstacles to incorporating the human rights framework in all development policies, programmes and projects and identify best practices in overcoming such obstacles;

(b) Develop measures and safeguards with the specific aim of ensuring human rights compliance throughout the project selection process;

(c) Ensure that effective mechanisms are in place to allow individuals and groups whose human rights are negatively affected by development cooperation activities to lodge complaints and to hold development agencies accountable;

(d) Make country ownership of development cooperation a priority and promote active, free and meaningful participation by relevant stakeholders in decision-making through the use of appropriate instruments;

(e) Refrain from imposing conditionalities in the provision of loans and grants that risk undermining the enjoyment of the human right to water and sanitation and compromising the partner country's ownership of the related programme or project;

(f) Design cooperation projects aimed at strengthening the legal, regulatory and policy frameworks of partner States, with a view to enhancing the sustainability of interventions;

(g) Prioritize funding that actually benefits the poorest and most disadvantaged and seek to end disparities in access to services;

(h) Correct the imbalance in funding of water supply and sanitation services, giving due priority to the sanitation sector and particular consideration to the related needs of the most disadvantaged populations, and adopt appropriate technology that takes into account the sociocultural characteristics of the target populations;

(i) Incorporate capacity-building as a priority aspect of development cooperation, ensuring the integration of human rights principles and related normative content and the involvement of the main stakeholders directly and indirectly relevant to the adequate provision of services. In particular, recognize the value of other forms of cooperation that have demonstrated their positive attributes, such as public-public partnerships.

75. Regarding the High-level Panel on Water, the Special Rapporteur recommends that:

(a) The mandate of the Panel be adjusted to ensure that its recommendations related to the achievement of Goal 6 possess a clear basis in

the principles and normative content of the human right to water and sanitation;

(b) **Participatory mechanisms be implemented that fully include relevant stakeholders in the decision-making process under the Panel's mandate.**